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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/601,832	06/24/2003	Michael Werth	ATO CM-332	9062
23599	7590	11/02/2005	EXAMINER	
MILLEN, WHITE, ZELANO & BRANIGAN, P.C. 2200 CLARENDON BLVD. SUITE 1400 ARLINGTON, VA 22201			AUGHENBAUGH, WALTER	
			ART UNIT	PAPER NUMBER
			1772	

DATE MAILED: 11/02/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/601,832	WERTH, MICHAEL	
	Examiner Walter B. Aughenbaugh	Art Unit 1772	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 09 August 2005.
- 2a) This action is FINAL.      2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) 8 is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-7,9 and 10 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                    | Paper No(s)/Mail Date. _____.   |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____. | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|   | 6) <input type="checkbox"/> Other: _____.                                   |

## **DETAILED ACTION**

### ***Acknowledgement of Applicant's Amendments***

1. The amendments made in claims 1, 3 and 9 in the Amendment filed August 9, 2005 (Amdt. A) have been received and considered by Examiner.
2. New claim 10 presented in Amdt. A has been received and considered by Examiner.

### ***Election/Restrictions***

3. Applicant's argument regarding the restriction requirement made FINAL in paragraph 1 of the previous Office Action mailed March 7, 2005 have been fully considered but are not persuasive. As a matter of the nature of article and method claims, an article claim cannot be a subcombination of a method claim because method claims are examined in regard to the method steps set forth in the claim, whereas article claims are examined in regard to the structure and/or composition recited in the claim: an article cannot be a component of a set of method steps because an article is not a method step.

### ***WITHDRAWN OBJECTIONS***

4. The objection to claim 9 made of record in paragraph 2 of the previous Office Action mailed March 7, 2005 has been withdrawn due to Applicant's amendment in claim 9 in Amdt. A.

### ***WITHDRAWN REJECTIONS***

5. The 35 U.S.C. 102 rejection of claims 1-3 and 9 made of record in paragraph 4 of the previous Office Action mailed March 7, 2005 has been withdrawn due to Applicant's amendment in claim 1 in Amdt. A.

***REPEATED REJECTIONS***

6. The 35 U.S.C. 102 rejection of claims 1 and 9 made of record in paragraph 5 of the previous Office Action mailed March 7, 2005 has been repeated for the reasons previously made of record and for the following reasons that address the amendment made in claim 1 in Amdt. A: Strassé et al. teach that polyamide is a suitable polymer for the shrinkable polymer layer, item 9 (col. 5, lines 12-24, shrinkable polymer layer, item 9, corresponds to the inner layer as claimed).

7. The 35 U.S.C. 103 rejection of claims 2-5 made of record in paragraph 7 of the previous Office Action mailed March 7, 2005 has been repeated for the reasons previously made of record taking into account the reasons that address the amendment made in claim 1 in Amdt. A provided above in this Office Action.

8. The 35 U.S.C. 103 rejection of claim 6 made of record in paragraph 8 of the previous Office Action mailed March 7, 2005 has been repeated for the reasons previously made of record taking into account the reasons that address the amendment made in claim 1 in Amdt. A provided above in this Office Action.

9. The 35 U.S.C. 103 rejection of claim 7 made of record in paragraph 9 of the previous Office Action mailed March 7, 2005 has been repeated for the reasons previously made of record taking into account the reasons that address the amendment made in claim 1 in Amdt. A provided above in this Office Action.

***NEW REJECTIONS***

***Claim Rejections - 35 USC § 103***

10. Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Strassel et al. in view of Flepp et al.

Strassel et al. teach the pipe as discussed above. Strassel et al. teach that the inner layer, item 9, is composed of a mixture of polymers and that polyolefins and polyamides are suitable polymers for the polymer/s of the inner layer (col. 5, lines 13-24). Strassel et al. teach that the mixture may also contain conventional additives (col. 5, lines 52-56).

Strassel et al. fail to explicitly teach that the material of the inner layer, item 9, is a blend of a polyamide and a polyolefin having a polyamide matrix.

Flepp et al., however, disclose a multilayer pipe (col. 1, lines 6-9 and col. 5, lines 18-36) comprising an inner layer comprising a blend of a polyamide and a polyolefin having a polyamide matrix (the adhesion-promoting layer of Flepp et al. that is made from a mixture of a polyamide and a compatibilizer is a layer comprising a blend of a polyamide and a polyolefin having a polyamide matrix since the compatibilizer is a polyolefin, col. 5, lines 28-29 and col. 6, lines 50-57). Therefore, one of ordinary skill in the art would have recognized to have used the blend of a polyamide and a polyolefin having a polyamide matrix taught by Flepp et al. as the mixture of the inner layer since a blend of a polyamide and a polyolefin having a polyamide matrix is a well known adhesion-promoting material for use as the material of an inner layer of a multilayer hose as taught by Flepp et al.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have used the blend of a polyamide and a polyolefin having a polyamide matrix

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taught by Flepp et al. as the mixture of the inner layer since a blend of a polyamide and a polyolefin having a polyamide matrix is a well known adhesion-promoting material for use as the material of an inner layer of a multilayer hose as taught by Flepp et al.

***Response to Arguments***

11. Applicant's arguments presented on pages 4-5 of Amdt. A regarding the 35 U.S.C. 102 rejection made of record in paragraph 5 of the previous Office Action mailed March 7, 2005 have been fully considered but are not persuasive. Applicant argues that Flepp et al. do not teach a thermoplastic polyamide because Flepp et al. only teach a thermoplastic elastomeric polyether amide, but the rejection of record does not rely upon the teaching of the polyether amide at col. 6, lines 32-35 but upon the teaching of polyamides at col. 5, line 24, which includes thermoplastic polyamides. Furthermore, the polyamides taught at col. 5, line 24 are taught as a suitable polymer for layer 9 (col. 8, lines 31-34) while the polyether amide is taught as a suitable polymer for the elastomer layer 8 (see col. 8, lines 28-31 and the section entitled "The elastomeric polymers" at col. 5, line 57- col. 6, line 35), so Applicant's argument regarding the polyether amide does not address the rejection of record.

12. Applicant's arguments presented on pages 5-6 of Amdt. A regarding the 35 U.S.C. 103 rejections have been fully considered but are not persuasive since Applicant's arguments depend entirely upon Applicant's arguments regarding the 35 U.S.C. 102 rejection made of record in paragraph 5 of the previous Office Action mailed March 7, 2005 that have been addressed above in this Office Action.

***Conclusion***

13. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Walter B. Aughenbaugh whose telephone number is 571-272-1488. While the examiner sets his work schedule under the Increased Flexitime Policy, he can normally be reached on Monday-Friday from 8:45am to 5:15pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Pyon, can be reached on 571-272-1498. The fax phone number for the organization where this application or proceeding is assigned is to 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished

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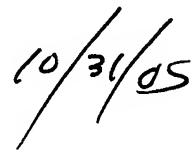
applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Walter B. Aughenbaugh

10/28/05

WBA

  
HAROLD PYON  
SUPERVISORY PATENT EXAMINER  
1772

  
10/31/05